



**UPDATE 2011**  
**CONFERENCE ON EXPORT**  
**CONTROLS AND POLICY**

# Encryption Workshop Update 2011

Information Technology Controls  
Division  
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U.S. DEPARTMENT OF COMMERCE  
BUREAU OF INDUSTRY AND SECURITY

IMPLEMENTING EXPORT CONTROL REFORM • IMPLEMENTING EXPORT CONTROL REFORM

## Agenda

- Implementation of June 25, 2010 rule
  - Classifications and registrations
  - Application of Note 4
  - Self-classification
  - New product descriptions under (b)(2) and (b)(3)
- What's New?
  - Publicly available software
  - Cryptographic activation
- What's Next

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## Implementation of June 2010 Rule

- Classification by BIS/NSA Required
  - Items described in 740.17(b)(2)/(b)(3) and 742.15(b)(3)
- Self-classification Permitted
  - Items described in 740.17(b)(1)/(4) and 742.15(b)(1)/(4)
  - Items with weak crypto/authentication only/described in decontrol notes
  - Note 4 items



## Self-classification

- BIS continues to receive many requests for items eligible for self-classification
- Not referred to NSA
- Sufficient product information must be submitted; Supplement No. 6 not required
- Annual Supplement 8 report required even if submitted for classification by BIS



## Registration Requirements

- Company registration required
  - Items described in 740.17(b)(1), (b)(2) and (b)(3)
  - Items described in 742.15(b)(1) and (b)(3)



## Registration (cont'd).

- Updating a company registration
- Reliance on a manufacturer's self-classification and registration
- Canceling a company registration



## Application of Note 4

- Note 4 overrides other reasons for decontrol of items with encryption functionality
  - Results in an EAR99 classification or classification under a different category of the control list
  - Other reasons for decontrol result in classification of 5A992/5D992 (5A002 decontrol notes/authentication only)



## Application of Note 4 (cont'd.)

- Considerations:
  - General purpose vs. application specific
  - “Primary function” of the product
  - Use of encryption
- Decision tree (hand-out)



## New Product Descriptions in 740.17(b)(2)/(b)(3)

- (b)(2) – network penetration capability
- (b)(3) – vulnerability analysis and forensics
  - Packet inspection
  - Investigation of data leakage
- *Distinguish from ECCN 5A980 (surreptitious listening)*



## New Product Descriptions in 740.17(b)(3) and 742.15(b)(3)

Duplicate entries for non-mass market and mass market

- “non-standard” cryptography
- Chips, chipsets, etc.
- Cryptographic libraries, modules and development kits
- Application-specific development kits implementing cryptography



## What's New?

- Publicly available mass market and object code software rule
  - January 7, 2011
- “Cryptographic activation”
  - 2010 Wassenaar amendment
    - Published May 20, 2011
- Form I-129 certification (deemed exports)



## What's New?

### Publicly Available Encryption Software

- Removed certain mass market and ECCN 5D002 object code software from EAR jurisdiction
- Publicly available source code remains subject to EAR and notification under License Exception TSU
- No change in regulatory requirements



## What's New?

### "Cryptographic Activation"

- Implementation of a Wassenaar 2010 plenary decision
  - Definition of "cryptographic activation" (part 772)
  - Decontrol note (j) to ECCN 5A002
  - New control paragraphs 5A002(b), 5D002(d) and 5E002(b)
- Consistent with section 740.17(b)(3)(iv) and section 742.15(b)(3)(iv)



## What's New?

### Form I-129 certification

- Export control compliance certification for deemed exports
- Application of EAR to encryption software and technology
  - section 734.2(b)(9)
  - section 740.17(a)(2)
- Web site guidance



## What's Next?

- U.S. proposal to Wassenaar
- Final Rule
- Export Control Reform



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